IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.11153 of 2007
To
SPECIAL CIVIL APPLICATION No.11158 of 2007
With
SPECIAL CIVIL APPLICATION No.12751 of 2007
To
SPECIAL CIVIL APPLICATION No.12754 of 2007
With
SPECIAL CIVIL APPLICATION No.12756 of 2007
With
SPECIAL CIVIL APPLICATION No.12758 of 2007
With
SPECIAL CIVIL APPLICATION No.12761 of 2007
To
SPECIAL CIVIL APPLICATION No.12765 of 2007
With
SPECIAL CIVIL APPLICATION No.12767 of 2007
To
SPECIAL CIVIL APPLICATION No.12769 of 2007
With
SPECIAL CIVIL APPLICATION No.12860 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

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MOHIT MADHUBHAI PATEL & 5 - Petitioner(s)
Versus
THE GUJARAT UNIVERSITY & 4 - Respondent(s)

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Appearance :

SCA NOS.11153/2007 to 11158/2007

MR GIRISH PATEL, SENIOR ADVOCATE, with MR AJ YAGNIK, ADVOCATE for the Petitioners

MR SN SHELAT, SENIOR ADVOCATE, with MRS VD NANAVATI, ADVOCATE, for Respondent(s) : 1,

MR SUNIT SHAH, GOVERNMENT PLEADER, with MR KRUNAL D. PANDYA, AGP for Respondent(s) : 2,

MR BHASKAR P TANNA, SENIOR ADVOCATE, with MS MAHROOK N. KERRAVALA, ADVOCATE, for TANNA ASSOCIATES for Respondent(s) : 3,

MR ND NANAVATI, SENIOR ADVOCATE, for MR MITUL K SHELAT, ADVOCATE for Respondent(s) : 4-5,

SCA NOS.12751/2007 TO 12754/2007, 12756/2007, 12758/2007, 12761/2007 TO 12765/2007, 12767/2007 TO 12769/2007, 12860/2007.

MR GIRISH PATEL, SENIOR ADVOCATE, with MR AJ YAGNIK, ADVOCATE for the Petitioners

MR SN SHELAT, SENIOR ADVOCATE, with MRS VD NANAVATI, ADVOCATE, for Respondent(s) : 1,

MR SUNIT SHAH, GOVERNMENT PLEADER, with MS KIRAN PANDEY, AGP for Respondent(s) : 2,

MS MAHROOK N. KERRAVALA, ADVOCATE, for TANNA ASSOCIATES for Respondent(s) : 3,

MR ND NANAVATI, SENIOR ADVOCATE, for MR MITUL K SHELAT, ADVOCATE for Respondent(s) : 4-5,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 11/07/2007

COMMON ORAL JUDGMENT

(1) All these petitions have been heard together as they involve common issue, except for difference in certain facts which do not have material bearing in so far as the controversy between the parties is concerned. For the sake of convenience the facts stated in Special Civil Application No.11153 of 2007 have been

considered.

(2) The petitioner Nos.1 to 5 in Special Civil Application No.11153 of 2007 are individual students while petitioner No.6 is Parents Association for Medical and Dental Students, having address at 105, City Point, Opposite Town Hall, Jamnagar. Respondent No.1 is Gujarat University; respondent No.4 is SBKS Medical Institute and Research Center (the Institute); and respondent No.5 is Sumandeep Vidyapeeth University (hereinafter to be referred to as 'SUMANDEEP').

(3) It is the case of the petitioner-students that they have been admitted between 08.11.2006 to 01.01.2007 with the Institute based on directions issued by Supreme Court of India and such admissions have been given by Centralized Admission Committee and respondent No.3-Justice R.J.Shah (Retired) Admission Committee. That despite being granted admission as aforesaid, Gujarat University has

not enrolled the petitioner-students while the Institute insists on enrolling the petitioner-students with SUMANDEEP, thus forcing change of University in the course of academic year 2006-2007.

(4) It is an admitted position that SUMANDEEP was accorded status of “Deemed to be University” vide Notification No.F.9-46/2004-U.3 dated 17.01.2007 (the Notification) issued by Department of Higher Education, Ministry of Human Resources Development, Government of India. The case of the petitioners is that the Institute did not provide enrollment forms for being enrolled with Gujarat University and by so-called disaffiliation of the Institute from Gujarat University, the petitioners are being compelled to seek enrollment with SUMANDEEP. That the petitioners are admittedly first year students of MBBS course.

(5) Mr.Girish Patel, learned Senior Advocate appearing on behalf of the petitioners,

invited attention to the Notification dated 17.01.2007 and pointed out that as stated in Paragraph No.2 of the Notification seven conditions have been imposed which appear at Sr. No.7 of the endorsement to the Notification. It was contended that when Condition Nos.(iv) and (v) are read together, it became apparent that students who are admitted with the Institute before 17.01.2007 are entitled to be enrolled with Gujarat University and Gujarat University has to agree to examine and grant degrees to the students on successful completion of the course the students are pursuing. That considering the point of time when the students sought admission and were granted admission, the students had exercised an option to seek admission in the Institute as the Institute was affiliated with Gujarat University. That subsequent Notification cannot be read so as to negate the option exercised by the petitioners. Hindi version of the Notification

was also read out to underscore that the word 'enrollment' used in Condition Nos.4 and 5 was carrying different meaning in so far as the Institute and the University are concerned. Referring to Section 42 of the Gujarat University Act, 1949 it was submitted that the said section only provided for qualification for enrollment of the students of the University and no other condition was attached for enrollment. Inviting attention to Ordinance No.69 under the Gujarat University Act it was submitted that the procedure prescribed by the said Ordinance would indicate that once a student secured admission with an affiliated college it was the principal of the college who was duty bound to enroll the student with Gujarat University. That in the present case the principal of the Institute had failed to carry out the said exercise which was cast on the principal under Ordinance No.69. That Ordinance No.69 also provided for a situation where if application

for enrollment could not be submitted in time, it was permissible to apply belatedly, and, therefore, there was an inbuilt provision which would take care of the petitioner-students in the event the prayers sought for were granted by the Court. That the petitioners had done all that they were required to do, but, at the cost of repetition, it was required to be stated that the principal of the Institute did not permit the petitioners to make application to Gujarat University and for such default on the part of the principal of the Institute the petitioner-students cannot be penalized. That SUMANDEEP was entitled to award degrees, etc. only to those students who are admitted with the four constituent Institutes named in the Notification, respondent No.4-Institute being one of them, subsequent to the date of Notification. In other words, as per Condition No.(iv) SUMANDEEP can only award degrees to students who have been admitted to the

Institute after 17.01.2007 and not to students who have been admitted at a point of time prior thereto. He, therefore, urged that in the aforesaid set of facts and circumstances of the case, the petitioner-students must be permitted to seek enrollment with Gujarat University and directions in this regard to Gujarat University also are required to be made.

(6) Mr.S.N.Shelat, learned Senior Advocate appearing on behalf of Gujarat University, submitted that when Condition Nos.(iv) and (v) of the Notification are read together it was apparent that Gujarat University cannot be asked to enroll students after the date of Notification and Condition No.(v) specifically provided only for students who had already been enrolled with Gujarat University, namely, students of 2nd year, 3rd year and 4th year of MBBS Course. That it was an accepted fact that the petitioner-students had not been enrolled

by Gujarat University nor by SUMANDEEP, and hence, in light of Notification dated 17.01.2007 read with Notification dated 23.01.2003 issued by Gujarat University, the petitioners should be directed to seek enrollment with SUMANDEEP and no direction can be issued to enroll the students with Gujarat University. That it was incorrect on the part of the petitioners to state that the petitioners had an option as to the University with which the petitioners could seek enrollment; in fact after Notification dated 17.01.2007 the petitioners had no choice and had to seek enrollment with SUMANDEEP. It was further submitted that in fact no right vested in the petitioners, the enforcement of which was sought by way of these petitions. Lastly, it was submitted that the petitioners had not shown any prejudice that the petitioners would suffer, because, in fact, the petitioners would not suffer any prejudice.

(7) Mr.N.D.Nanavati, learned Senior Advocate

representing SUMANDEEP, adopted the submissions made by Mr.Shelat, learned Senior Advocate appearing on behalf of Gujarat University, and went on to state that Condition No.(iv) was very clear and the word 'enroll' had not to be read as meaning to be equivalent to the word 'admitted' in light of Ordinance No.69. That Ordinance No.69 specifically indicates that there was distinction between admission to the Institute and enrollment with the University. That once the Institute was itself disaffiliated by Gujarat University, there can be no occasion whereunder a student studying with the Institute can seek enrollment with Gujarat University despite the fact that the Institute had already been disaffiliated. He, therefore, urged that the petitions were required to be rejected. However, he accepted and stated that SUMANDEEP would not raise any technical objections and would enroll the petitioners in the event the Court rejected the petitions.

(8) Mr.B.P.Tanna, learned Senior Advocate appearing on behalf of respondent No.3-Committee, stated that though the Committee had no direct role to play in the controversy brought before the Court, to assist the Court, certain facts had to be brought to the notice of the Court. It was submitted that the petitioners had made an incorrect statement that the admissions were secured between 08.11.2006 to 01.01.2007 whereas, in fact, 85% of the admissions had been finalized in September 2006. That students, who obtained admissions through Central Admission Process under the aegis of respondent No.2-Committee, had indicated their preference in so far as the Institute is concerned, keeping in mind the affiliation of the Institute with the University in light of pursuing postgraduate studies. That, therefore, neither Gujarat University nor SUMANDEEP must be permitted to insist that the petitioners must seek enrollment with SUMANDEEP considering the fact

that the academic year had already commenced when the Notification was issued on 17.01.2007. He, therefore, urged that the Court must have the interest of students as paramount consideration while deciding the issue brought before the Court. In short, he supported the case of the petitioners.

(9) In rejoinder Mr. Girish Patel, learned Senior Advocate appearing on behalf of the petitioners, submitted that it was incorrect on the part of Gujarat University and SUMANDEEP to contend that no prejudice was caused to the petitioners. That the petitioners had in fact stated in Paragraph No.17 of the petition thus:

> “17. The petitioners state and submit that as compared to the status of Gujarat University, respondent Sumandeep Vidyapeeth University has no status and caliber and therefore, they are being put to disadvantage by the respondent No.4 College in compelling them to enroll themselves with

respondent No.5 University."

It was also submitted that SUMANDEEP cannot confer any degrees on students who have been admitted with the Institute prior to the date of the Notification. That, admittedly, the petitioners had been admitted by the Institute prior to the date of the Notification and hence, the embargo on SUMANDEEP was absolute.

(10) The relevant extract of Notification dated 17.01.2007 is reproduced hereunder for ready reference:

"(TO BE PUBLISHED IN THE GAZETTE OF INDIA PART-I, SECTION-1)

No.F.9-46/2004-U.3
Government of India
Ministry of Human Resource Development
Department of Higher Education
U.3 (A) Section

Shastri Bhawan, New Delhi
Dated the 17th January, 2007

N O T I F I C A T I O N

In exercise of the powers conferred by Section 3 of the University Grants Commission (UGC) Act, 1956, the Central Government, on the advice of the University Grants Commission, hereby declare Sumandeep

Vidyapeeth, Village Piparia, Taluka Waghodia, District Vadodara (Gujarat) comprising the following constituent teaching Institutions, as a 'Deemed to be University' under *de novo* category, for the purposes of the aforesaid Act, provisionally for a period of five years with effect from the date of disaffiliation of the four constituent Institutions mentioned below from the affiliating university, namely, Gujarat University, Ahmedabad:-

(a) K.M. Shah Dental College and Hospital, Village Piparia, Taluka Waghodia, District Vadodara (Gujarat),

(b) K.J. Pandya College of Physiotherapy, Village Piparia, Taluka Waghodia, District Vadodara (Gujarat),

(c) S.B.K.S. Medical Institute and Research Centre, Village Piparia, Taluka Waghodia, District Vadodara (Gujarat), and

(d) Sumandeep Nursing College, Village Piparia, Taluka Waghodia, District Vadodara (Gujarat).

2. This declaration is subject to the conditions mentioned at Sl. No.7 of the endorsement of this notification.

Sd/-
(KESHAV DESIRAJU)
Joint Secretary to the Government of India

The Manager,
Government of India Press,
Faridabad (Haryana)

Copy forwarded for information to:-

5. Vice Chancellor, Gujarat University, Post Box No.4010, Navrangpura, Ahmedabad-380009.

7. Chairman and Managing Trustee, Sumandeep Vidyapeeth, Piparia, Taluka Waghodia, District Vadodara (Gujarat):

(i) Sumandeep Vidyapeeth, Piparia, Taluka Waghodia, District Vadodara (Gujarat), including its constituent institutions, will adhere to the norms and guidelines laid down and instructions issued from time to time by the University Grants Commission pertaining to institutions notified as Deemed to be Universities.

(ii) The management of the aforesaid four constituent institutions and that of the Sumandeep Vidyapeeth, Piparia, Taluka Waghodia, District Vadodara (Gujarat) shall be the same. Further, the assets of the these four constituent institutions shall come under the total control of the Sumandeep Vidyapeeth in the interest of future of students, members of faculty, employees and for maintaining the standards of higher education.

(iii) Sumandeep Vidyapeeth, Piparia, Taluka Waghodia, District

Vadodara (Gujarat) will disaffiliate all of its four constituent institutions from the affiliating State University to which these institutions are presently affiliated, namely, Gujarat University, Ahmedabad.

(iv) Sumandeep Vidyapeeth shall award degrees, etc. in respect of the courses run by the aforesaid constituent institutions only to those students who are enrolled with these institutions subsequent to the date of this notification.

(v) As for those students who are already enrolled with these Institutions prior to the date of this notification, they shall continue to be enrolled with the present affiliating university, namely, Gujarat University, Ahmedabad, which shall have to agree to examine and grant degrees to them on successful completion of the courses / programmes they are pursuing at present in these teaching Institutions of the Vidyapeeth.

(vi) Sumandeep Vidyapeeth shall not offer / award any degrees that are not specified by the UGC. The Institute will continue to ensure that the nomenclature of the degrees awarded by it are specified by the UGC under Section 22 of the UGC Act, 1956.

(vii) All norms of Medical Council of India, Dental Council of India and Indian Nursing Council will continue to be in force, and shall be strictly complied with by the Deemed-to-be-University and its constituent

Institutions."

(11) On a plain reading the opening portion of the Notification stipulates that SUMANDEEP has been declared as a "Deemed to be university" under *de novo* category, for the purposes of the University Grants Commission Act, 1956 provisionally for a period of five years w.e.f. the date of disaffiliation of the four constituent Institutions mentioned below from the affiliating University, namely, Gujarat University. Respondent-Institute is one of the four constituent institutes.

(12) Paragraph No.2 of the Notification lays down that the declaration is subject to the conditions mentioned at Sr. No.7 of the endorsement to the Notification. Condition No. (ii) stipulates that management of the four constituent institutions and of SUMANDEEP shall be the same. Further, the assets of the four constituent institutions shall come under the total control of SUMANDEEP in the interest of future of students, members of faculty,

employees and for maintaining the standards of higher education. The effect of this condition would be that four constituent institutions have very limited independent personality left after the Notification and for all intents and purposes they are part and parcel of SUMANDEEP in so far as management is concerned.

(13) Condition No.(iii) stipulates that SUMANDEEP will disaffiliate all the four constituent institutions from the affiliating State university to which the institutions were affiliated till the date of the Notification, namely, Gujarat University.

(14) Condition No.(iv) which is couched in a negative frame places an embargo on SUMANDEEP that SUMANDEEP can award degrees in respect of courses run by the four constituent institutions only to those students who are enrolled with the constituent institutions subsequent to the date of the Notification. As to what is the meaning to be assigned to the

term 'enroll' used in this condition will become clear when one reads Condition No.(v).

(15) Condition No.(v) stipulates that students who are already enrolled with the four constituent institutions prior to the date of the Notification, shall continue to be enrolled with the present affiliating university, namely, Gujarat University; the subsequent portion of the condition casts an obligation on Gujarat University that Gujarat University shall have to agree to examine and grant degrees to such students on successful completion of the courses the students are pursuing at present in the four constituent institutions of SUMANDEEP. (*emphasis supplied*) In other words, the condition stipulates that in the first instance the students have to be admitted by any one of the four constituent institutions, secondly the students have to be enrolled with Gujarat University, and both these requirements have

to be satisfied prior to the date of the Notification. Upon such requirements being satisfied, Gujarat University has been mandated to examine the students and grant degrees after the students successfully complete the courses. The latter portion of Condition No.(v) stipulates successful completion of courses being pursued by students, namely, pursued at present, in four constituent institutions of SUMANDEEP. At this juncture, it requires to be noted that Condition No.(v) talks of students pursuing at present courses in “teaching institutions” at SUMANDEEP, as against the phrase “constituent institutions” used in Condition Nos.(ii), (iii) and (iv) which have been set out earlier.

(16) Thus, it becomes apparent that on the date of the Notification the petitioners had to be students who were admitted by the Institute prior to the date of the Notification; the

petitioners have to continue to be enrolled with the present affiliating university, namely, Gujarat University and the petitioners are pursuing at present courses in the teaching institutions of SUMANDEEP. The facts reveal that the petitioners fulfill the first and the third requirements but not the second requirement.

(17) The question that requires to be then answered is whether, as contended on behalf of the petitioners, the fault, if any, lies with the principal of the Institute or any other authority. For the reasons that follow hereinafter, it is not necessary to go into this aspect of the matter as the same is not material and relevant.

(18) Regardless of the fact as to who is to be faulted with for non-enrollment of the petitioner-students with Gujarat University, one has to read Condition No.(v) and give complete meaning to the words used therein.

The words are “they shall continue to be enrolled”, meaning thereby they have to be students who were already enrolled with Gujarat University on the date of the Notification. These cannot be students who were seeking enrollment or who were awaiting enrollment. If that particular meaning is adopted the concept of the term 'continue' would not be in consonance with its grammatical import when the said term is used in conjunction with the word “shall” preceding the term “continue” followed by the words “to be enrolled with the present affiliating university”. To put it differently, the Institute was affiliated with present affiliating university, namely, Gujarat University on the date of the Notification. The student admitted in the Institute on the said day has to be also a student who had already been enrolled and only then he can seek continuation of his enrollment with Gujarat University. The aforesaid meaning

adopted by the Court derives support from the use of the phrase “pursuing at present” which is found in the latter portion of Condition No.(v).

(19) Apart from the aforesaid interpretation which flows from a plain reading of Condition No.(v) when the intent and purpose for incorporating Condition No.(v) is borne in mind it becomes apparent that students pursuing their studies in MBBS course from 2nd year onwards are the students who are considered while incorporating Condition No.(v). It is those students, namely, students of 2nd year, or 3rd year, or 4th year of MBBS, who had been admitted to the Institute prior to the date of the Notification, had already been enrolled with Gujarat University, and are pursuing at present their studies in the teaching institute of SUMANDEEP.

(20) In the aforesaid set of facts and circumstances the Court cannot re-write the

language of Notification on the specious plea that the students had, at the time of securing admission, considered as to whether they would be entitled to complete post-graduation with a particular University. The Court has to read the Notification and derive the plain meaning which flows from the language employed. In absence of any ambiguity recourse cannot be had to any other consideration. In fact the contention regarding option / choice is a misplaced contention in the factual scenario. At the point of time when the petitioners sought admissions there was no question of exercise of option as the Institute was affiliated to Gujarat University and SUMANDEEP was nowhere in picture as “Deemed to be University”.

(21) In the aforesaid set of facts and circumstances of the case, no directions, as prayed for, can be granted. However, SUMANDEEP having already committed itself, through its Counsel, to grant enrollment to the

petitioners, is directed to grant such enrollment after condoning delay, if any, in seeking such enrollment, considering the pendency of the petitions.

(22) In the result, the petitions are rejected, for the reasons stated hereinbefore. NOTICE discharged. There shall be no order as to costs.

(23) Registry to place a copy of this order in connected matters.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*